BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DONNA CRIDER Claimant VS. **WOMEN'S CARE** Respondent AND **HARTFORD INS. CO. OF THE MIDWEST** Insurance Carrier	)	Docket No. 1,036,260

ORDER

STATEMENT OF THE CASE

Claimant requested review of the July 31, 2008, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh. Joshua P. Perkins, of Kansas City, Missouri, appeared for claimant. Anemarie D. Mura, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

The Administrative Law Judge (ALJ) found that claimant did not prove by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with respondent and, accordingly, denied her request for medical treatment for that condition.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the July 30, 2008, Preliminary Hearing and the exhibits and the transcript of the March 24, 2008, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

ISSUES

Claimant argues that the evidence showed that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with respondent. Accordingly, claimant requests that the Board reverse the preliminary hearing order entered by the ALJ.

Respondent argues that claimant's testimony is not credible and that the medical testimony does not support claimant's claim that her bilateral carpal tunnel syndrome arose out of and in the course of her employment. Respondent, therefore, requests that the ALJ's preliminary hearing Order be affirmed.

The issue for the Board's review is: Did claimant's bilateral carpal tunnel syndrome arise out of and in the course of her employment with respondent?

FINDINGS OF FACT

Claimant began working part-time for respondent as a medical records clerk in October 2002. She was hired to work two days a week, but she filled in at other times when needed. She stated the fewest number of hours she worked per week was 14 and the maximum would be 35 to 40 hours. Most of the time she worked 20 to 25 hours per week. On the days she worked, she worked seven or eight hours. In performing her job, she was required to pull charts for appointments and replace them after the appointments. She was also required to do a lot of loose sheet filing, which entailed pulling charts off the shelf, opening the clips, putting the filing into the charts, closing the clips, and replacing the charts on the shelf. She estimated she filed hundreds of loose sheets every day she worked. The first three years she worked for respondent, her main job was filing loose sheets. After that, she started helping more with other duties.

Claimant testified that she told Robert Danner, respondent's Practice Manager, that she thought filing the loose sheets was affecting her wrists, and he told her she would need a doctor's note. She does not remember when that conversation took place. However, about a week later, her job changed and she was not required to file the loose sheets as much. As a result, her symptoms let up. Mr. Danner testified that he did not remember claimant reporting wrist or hand symptoms before the May 2007 accident. He did not know whether claimant's supervisor removed her from the job duty of filing loose sheets. He submitted a list of duties and responsibilities of a medical records clerk. He agreed that during the five years claimant worked for respondent, the majority of her job duties required repetitive use of her hands.

On May 3, 2007, claimant was bending down to get some charts off the bottom shelf when some charts fell off the top shelf and hit her in the back of the head, injuring her head and neck. She testified that about two weeks later, she started having numbness in her left hand. This was the first time her hand went completely numb, and she at first thought it was a result of her neck injury of May 3. Now, however, she believes the cause of her carpal tunnel syndrome was her job task of filing loose sheets.

Claimant was treated for her head and neck injury. She was eventually seen by Dr. Clifford Gall, a neurologist, whom she first saw on June 29, 2007. Her main complaints at that time were the pain in her head and neck and the numbness in her left hand. She was also having problems with her right hand, but those problems were not as bad as the

problems with her left hand. Dr. Gall recommended that she have an EMG, which was done in August 2007. The EMG revealed that she had bilateral carpal tunnel syndrome, severe in her left hand and moderate in her right hand. Dr. Gall recommended that she have carpal tunnel surgery.

Claimant was seen by Dr. Anne Rosenthal on November 19, 2007, at the request of respondent. Claimant reported to Dr. Rosenthal that she was off work after the May 3 accident until August 22, 2007. She reported that after she returned to work, beginning in September 2007, she again had pain in her left wrist after pulling some charts. Dr. Rosenthal gave her splints to wear on her wrists. Although Dr. Rosenthall also recommended physical therapy, claimant has not had physical therapy for her hands or wrists. Dr. Rosenthal ordered an MRI of claimant's left hand and then diagnosed her with tendinitis. Dr. Rosenthal reviewed a time sheet prepared by respondent, as well as a list of job tasks that claimant performed, and opined that claimant did not work enough hours to develop carpal tunnel syndrome. Accordingly, Dr. Rosenthal opined that claimant's carpal tunnel syndrome was not vocationally related.[1] She also did not think that claimant's tendinitis was related to her work, since she did not complain of left wrist pain until September 2007.[2]

Claimant saw no other physicians for her hands or wrists until she was seen by Dr. Edward Prostic on February 1, 2008, at the request of her attorney. After examination, Dr. Prostic diagnosed her with bilateral carpal tunnel syndrome and with tendinitis on the left. He recommended bilateral carpal tunnel release surgery.

On April 24, 2008, claimant was seen by Dr. Lynn Ketchum at the request of her attorney. After taking a history and examining claimant, he diagnosed her with severe left carpal tunnel syndrome, moderate right carpal tunnel syndrome, and a herniated intervertebral cervical disc at C6-7. He opined that the herniated disc was a result of the May 3, 2007, accident but said the etiology of her bilateral carpal tunnel syndrome was not the May 2007 accident. Instead, he believed the carpal tunnel condition was caused by the repetitive work she performed in the five-year period she worked at respondent, even though her work at respondent was only part-time.

PRINCIPLES OF LAW

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.[3]

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[1] P.H. Trans. (March 24, 2008), Resp. Ex. A at 1.

[2] *Id.* at 2.

[3] K.S.A. 2007 Supp. 44-501(a).

Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[4]

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[5]

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.[6] The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.[7] An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.[8]

K.S.A. 2007 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2007 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

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[4] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

[5] *Id.* at 278.

[6] *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

[7] *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, Syl. ¶ 2, 949 P.2d 1149 (1997).

[8] *Nance v. Harvey County*, 263 Kan. 542, 547-50, 952 P.2d 411 (1997).

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[9] Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.[10]

ANALYSIS

Claimant contends that her repetitive, hand-intensive job duties over her five-year work history with respondent caused her bilateral carpal tunnel syndrome. She is not attributing her carpal tunnel syndrome condition to the specific traumatic event on May 3, 2007, when some files fell on her and injured her neck. Claimant now believes that it was just coincidental that her left hand numbness increased following the May 2007 accident. Claimant argues that she experienced a gradual onset of her bilateral hand symptoms and those symptoms preexisted the May 2007 accident. Claimant also argues that she does not participate in any hand intensive activities or hobbies away from work and so there is no other explanation for her condition.

In defense of this claim, respondent points to claimant's inconsistent testimony about the onset of her symptoms and that Dr. Ketchum relied upon an inaccurate history in relating claimant's condition to her work with respondent. In addition, respondent points to the number of hours claimant worked for respondent as further evidence against work being the causative factor of claimant's carpal tunnel syndrome.

The record contains causation opinions from three physicians concerning claimant's carpal tunnel syndrome. All three diagnosed claimant with bilateral carpal tunnel syndrome. Dr. Rosenthal and Dr. Prostic also diagnosed claimant with tendinitis in her left wrist. Dr. Rosenthal opined that claimant did not work enough hours per week to develop carpal tunnel syndrome. She gave the same opinion for the tendinitis. She therefore concluded that claimant's carpal tunnel syndrome and tendinitis are not vocationally related. Dr. Rosenthal did not say what the cause of these conditions was. In arriving at those conclusions, Dr. Rosenthal appears to have focused on claimant's employment after May 2007 in particular. Claimant was off work from the end of May until the first week of September 2007. Claimant resigned her position with respondent in December 2007. Respondent's Exhibit B shows that claimant worked fewer hours upon her return to work in September 2007.

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[9] K.S.A. 44-534a; see *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

[10] K.S.A. 2007 Supp. 44-555c(k).

Dr. Prostic's report does not contain a specific date or history concerning the onset of claimant's hand and wrist symptoms. It relates that her bilateral carpal tunnel syndrome was diagnosed as a result of the treatment claimant received following her May 2007 accident. However, Dr. Prostic relates the carpal tunnel syndrome to claimant's repetitive use of her hands at work.

The history recorded by Dr. Ketchum was that claimant's upper extremity problems began after the May 3, 2007, accident. Dr. Ketchum notes that claimant's work with respondent was "very strenuous and repetitive" and "required repetitive gripping and pinching throughout the day."[11] Dr. Ketchum opined that the cause of claimant's bilateral carpal tunnel syndrome was not the May 3, 2007 accident

> but was related to the five years of doing repetitive work with her left hand in a very strange position all day long in the 3= days that she worked at Women's Care a week, and she did this particular motion all day long. That, more than anything, is the cause for her developing carpal tunnel syndrome and fortuitously it had a clinical presentation three weeks after the injury to her neck on May 3, 2007.
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> Because she had no symptoms for the 15 years prior to that clinical presentation and because she did not do any repetitive sports or hobbies, it is my opinion that the job at Women's Care, even though it was a part-time job, was the cause of her developing carpal tunnel syndrome.[12]

In addition to his examination of claimant, Dr. Ketchum had the benefit of both Dr. Rosenthal's and Dr. Prostic's records and reports, the records of Dr. Gall, the EMG report of Dr. Malik, and the x-ray reports, as well as the prior testimony of claimant.

Despite claimant's subsequent testimony that she experienced symptoms before May 2007, this Board Member finds the opinion of Dr. Ketchum to be the most credible in this instance. It does not appear that this change in claimant's history would be likely to affect Dr. Ketchum's opinion that claimant's job duties caused or contributed to her condition, particularly when the onset of symptoms was still during claimant's employment with respondent. As such, claimant has met her burden of proving that her bilateral carpal tunnel syndrome was caused by her work with respondent.

CONCLUSION

Claimant's bilateral carpal tunnel syndrome arose out of and in the course of her employment with respondent.

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[11] P.H. Trans. (July 30, 2008), Cl. Ex. 1 at 1.

[12] *Id*., Cl. Ex. 1 at 3.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated July 31, 2008, is reversed and this case is remanded for further orders on claimant's request for medical treatment.

IT IS SO ORDERED.

Dated this _____ day of October, 2008.

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HONORABLE DUNCAN A. WHITTIER
BOARD MEMBER

c: Joshua P. Perkins, Attorney for Claimant
Anemarie D. Mura, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge